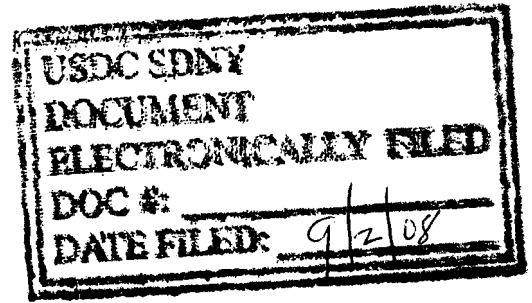


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X  
HOMER AKI MATHIS,

Petitioner,

- against -

LUIS R. MARSHALL,

Respondent.  
-----X

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ORDER

08 Civ. 3991 (LTS)(FM)

**FRANK MAAS**, United States Magistrate Judge.

Petitioner Homer Aki Mathis (“Mathis”) commenced this pro se habeas proceeding on April 29, 2008. (Docket No. 2). By order dated August 7, 2008, I directed the respondent to file and serve its answer on or before November 10, 2008. (Docket No. 7).


On August 11, 2008, Mathis filed a motion to hold his petition in abeyance because he intends to move in state court to vacate his judgment of conviction pursuant to Section 440.10 of the New York Criminal Procedure Law based on ineffective assistance of appellate counsel and newly discovered evidence. (Docket No. 8).

In Zarvela v. Artuz, 254 F.3d 374, 381 (2d Cir. 2001), the Second Circuit cautioned that a stay should be limited in time, with the petitioner ordinarily granted thirty days to initiate exhaustion and an additional thirty days to return to this Court once his claims are fully exhausted. Accordingly, Mathis’ motion is granted on two conditions:

first, Mathis must file his Section 440.10 motion in state court within thirty days; second, he must return to this Court within thirty days after he has exhausted his state court remedies with respect to that motion.

SO ORDERED.

Dated: New York, New York  
September 2, 2008

  
FRANK MAAS  
United States Magistrate Judge

Copies to:

Hon. Laura Taylor Swain  
United States District Judge

Homer Aki Mathis (No. 04-A-3627)  
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